BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 80-251-E - ORDER NO. 81-214

March 20, 1981

IN RE:	Small Power Production and Cogeneration Facilities - Implementation of Section 210 of the Public Utility Regulatory Policies Act of 1978	ORDER IMPLEMENTING PURPA

I.

This matter comes before the South Carolina Public Service Commission (hereinafter "the Commission") by way of the operation of certain provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 (hereinafter "PURPA"),[1] and certain rules and regulations promulgated thereunder.

Section 210 of PURPA, _inter alia_, directed the Federal Energy Regulatory Commission (hereinafter "the FERC") to prescribe rules designed to encourage cogeneration and small power production by requiring certain affected electrical utilities to offer both to sell electric energy to qualifying cogeneration facilities[2] and qualifying small production

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[1]Pub. L. 95-617, 92 Stat. 3117 _et seq._ (19 U.S.C. §§ 2601 _et seq._) (1978).

[2]The final Section 210 regulations do not define this term. The reader is referred to the final regulations promulgated under § 201 of PURPA. In order to qualify, the cogeneration facility must satisfy certain operation and efficiency standards as established in 18 C.F.R., § 292.205. Upon certain showings, the FERC may waive these standards. Until further action by the FERc, any diesel cogeneration facility which was installed after March 13, 1980, does not qualify. 18 C.F.R, § 292.203(c). Also, a public utility, electric utility, any subsidiary of either, or a public utility holding company may not hold an equity interest in a qualifying cogeneration facility which equals 50 percent or more. 18 C.F.R., §§ 292.203, 292.206.

facilities[3] (hereinafter collectively referred to as "qualifying facilities") and to purchase electric energy from such qualifying facilities. During February and March 1980, the FERC issued certain rules pursuant to Section 210 which define the requirements for the qualification of qualifying facilities and delineated the guidelines for the determination of the special rates and terms for the purchase and sale of the electric energy envisioned by Section 210 of PURPA.[4] The FERC rules were effective on and after March 20, 1980, and require certain action by State regulatory authorities, including this Commission, within twelve months of that date.

Essentially, in accordance with the rules promulgated by the FERC for the implementation of Section 210 of PURPA, an affected electric utility is required to purchase electric energy produced by qualifying facilities at a rate reflecting the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself

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[3] As in the case of the qualifying cogeneration facility, the reader is referred to the final regulations promulgated under § 201 of PURPA. A qualifying small power production facility must meet the same ownership test as required of the qualifying cogeneration facility. 18 C.F.R., §§ 292.203, 292.206. The qualifying small power production facility must have a design capacity of 80 MW or less of production output. The design capacities of all facilities which use the same energy resource, are owned by the same person and are located within one mile of the facility for which qualification is sought are to be included in determining the 80 MW limit. 18 C.F.R., § 292.204. The primary energy source used by these facilities must be more than 50 percent biomass, waste, renewable resources or any combination thereof. _Id._ If oil, natural gas or coal is used as a supplementary fuel source, its use cannot exceed 25 percent of the total fuel input. _Id._ Hydroelectric facilities owned by the same person and located within a distance of one mile from another are considered at the same site only if they use water from the same impoundment. 18 C.F.R., § 292.204.

[4] _See_, 18 C.F.R. Part 292. _See_, FERC Docket No. RM79-54. _See, also_, FERC Docket No. RM79-55, Small Power Production and Cogeneration Facilities - Rates and Exemptions.

or purchasing the energy or capacity from other suppliers.[5] In order to enable potential cogenerators and small power producers to estimate the avoided costs, the FERC's rules require affected electric utilities to furnish certain information to the appropriate regulatory authority relating to the present and future costs of energy and capacity on their respective systems.[6] The information was required to be filed with the regulatory authority not later than November 1, 1980.[7]

The promulgated rules also require the affected electric utilities to sell, upon request by a qualifying facility, supplementary, back-up, maintenance, and interruptible power services.[8] The rates for these services must be just, reasonable, in the public interest and must not discriminate against the qualifying facility.[9] The Commission may grant a waiver of the obligation to make sales under certain conditions.[10]

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[5] 18 C.F.R. § 292.303. The requirement to pay the full avoided costs does not necessarily apply to cogeneration or small power production facilities whose construction commenced prior to November 9, 1978, nor is such requirement intended to supersede existing or future voluntary agreements between cogenerators or small power producers and an affected utility.

[6] The affected electric utilities subject to the jurisdiction of this Commission are Carolina Power & Light Company ("CP&L"), Duke Power Company ("Duke"), and South Carolina Electric & Gas Company ("SCE&G").

[7] See, 18 C.F.R. § 292.302(b).

[8] 18 C.F.R. § 292.305(b)1.

[9] 18 C.F.R., § 292.305(a).

[10] 18 C.F.R., § 292.305(b)2 provides that the requirement of § 292.305(b)1 may be waived when the State authority or the FERC finds, after proper notice and opportunity to be heard, that compliance with the requirement would a) impair the affected electric utility's ability to give adequate service to the rest of its customers or b) place an undue burden on the affected electric utility.

Additionally, the rules exempt qualifying facilities from certain provisions of the Federal Power Act,[11] from the provisions of the Public Utility Holding Act of 1935 related to electric utilities, and from state laws regulating electric utility rates and financial organization.[12]

On September 29, 1980, the Commission issued its Order No. 80-539, in compliance with PURPA requiring data identified in the applicable Section of PURPA[13] to be filed no later than November 1, 1980. The docket file indicates each affected electric utility complied with said Order.

By letter dated November 14, 1980, the Commission's Executive Director sent to the parties of record a Notice of Hearing, which set a hearing date for this matter on January 14, 1981 at 10:30 A.M. These parties of record were thereby required to publish one time, the Notice of Hearing, in newspapers of general circulation in the affected areas, and provide to the Executive Director proof of publication of the Notice on or before December 19, 1980. The Docket file herein indicates that affidavits of publication were received.

Thereafter, the Commission determined a Public Hearing should be held in regard to the implementation of the PURPA rules. The Commission Staff filed information data request number I on November 21, 1980. Thereafter, on December 22, 1980, the Commission issued its Order No. 80-723 requiring the prefiling of testimony.

Pursuant to notice duly given in accordance with applicable provisions of law and with the Commission's Rules of Practice and Procedure, a public hearing was held on January 14, 1981, in order to receive testimony and evidence from interested parties relative to the matters herein. Chairman Rudolph

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[11] 18 C.F.R, § 292.601.

[12] See, 18 C.F.R., § 292.602.

[13] See, 18 C.F.R., § 292.302(b).

Mitchell presided. Robert Guild, Esquire, represented South Carolina Welfare Rights Organization; William Edward Poe, Jr., Esquire, represented Duke Power Company; William F. Austin, Esquire, and John T. Bode, Esquire, represented Carolina Power and Light Company; Raymond E. Lark, Jr., Esquire, represented the South Carolina Consumer Advocate's Office, Department of Consumer Affairs; Patricia T. Marcotsis, Esquire, represented South Carolina Electric and Gas Company; M. John Bowen, Jr., Esquire, represented South Carolina Textile Manufacturers Association. Lockhart Power Company was represented by Leslie Anderson. Kelly Smith, Director, South Carolina Governor's Office, Division of Energy Resources also appeared. Arthur G. Fusco, Esquire, and Helen T. Zeigler, Esquire, represented the Commission and the Commission Staff.

II.

The Commission recognizes that affected electric utilities and qualifying facilities should not be overly restricted in the type of arrangements which they may negotiate in order to achieve the objective of Section 210 of PURPA and the rules and regulations promulgated pursuant thereto. As Mr. Robert Spann testified:

> ...I would allow the companies [the affected electrical utility] some latitude in the type of contracts they negotiate and the type of rates they set up, provided the rates do not discriminate against qualifying facilities and do not harm other ratepayers. The reason I say that is I'm sure there are innovative arrangements and tariff provisions that none of us have thought of but that may come up in the course of negotiations over time, so that provided appropriate safeguards are there, it would seem better to give the latitude that those approaches can develop as opposed to having too rigid a set of rules that do not allow for the development of rates and other type contracts that might encourage self generation. 14/

Neither Section 210 of PURPA nor the regulations promulgated pursuant thereto preclude affected regulated utilities and qualifying facilities from entering into voluntary negotiated

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[14] Tr., Vol. 1, Spann, p. 60.

agreements. Pursuant to these agreements, the affected electrical utility and qualifying facility may set rates, terms and conditions relating to purchases which differ from those which otherwise would be required by Section 210 of PURPA and the rules and regulations promulgated thereunder.[15] The rate provisions of Section 210 of PURPA apply only if a qualifying facility chooses to avail itself of that Section. The Commission recognizes that the affected electrical utility and qualifying facilities should have some degree of flexibility in reaching voluntary agreements on rates and conditions which may encourage investment in cogeneration and small power production. The Commission, therefore, encourages the affected electrical utilities, qualifying facilities, particularly larger, to use voluntary negotiated agreements to promote investment in cogeneration and small power production and reaffirms their right to do so under PURPA. However, the Commission reaffirms the rights and protections of the qualifying facility afforded by PURPA and the rules promulgated thereunder should the qualifying facility choose to avail itself of them. These rights and protections should aid such facilities in its negotiations with the affected electrical utility.

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[15] 18 C.F.R., § 292.301(b)a and (2) provides:

Negotiated rates or terms. Nothing in this subpart:

> (1) Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subpart; or
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> (2) Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.

In recognizing the right of contract negotiation under these rules, and, in fact, encouraging the same, the Commission does not intend to, nor does it, divest itself of its statutory authority, responsibility, and jurisdiction to supervise the affected electrical utilities.[16] The Commission recognizes the need to be able to review the contracts of the electric utilities which it regulates. The Commission affirms the right of the affected electrical utility, and the qualifying facility to submit complaints regarding such agreements to the Commission for review. The Commission retains its jurisdiction to review any agreements, pursuant to said complaint or on its own motion, between the affected electrical utility and the qualifying facility as to its reasonableness and as to its compliance with the rules of the Commission and PURPA. Should the Commission find the terms of the agreements would not encourage the development of cogeneration and small power production facilities, are not fair, reasonable or in the public interest, or are not in compliance with PURPA or the Commission's Orders, the Commission may declare the agreements null and void pursuant to its authority under South Carolina law to review contracts for purchases as part of its responsibility to regulate the affected utilities.

Various contractual documents have been entered as evidence by each of the affected electrical utilities to insure the necessary legal guarantees and various technical requirements are recognized when a qualifying facility begins operation.[17]

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[16] See, § 58-3-140, S. C. Code Ann. (1976). See, also, § 58-27-40, S. C. Code Ann. (1976).

[17] Hearing Exhibit # 2, Montague, Exhibit 1; Hearing Exhibit # 4, Denton; Exhibit 3, HGB-1 through HGB-3; Hearing Exhibit # 6, Boylston.

In reviewing such evidence, the Commission finds each affected electrical utility has proposed terms and conditions which are similar in comparison to established procedures and do not appear to unfairly compromise a qualifying facility's stance in relation to its respective affected electrical utility. Various issues were discussed during cross-examination, but standard periods for contract performance received greatest attention. Duke and CP&L have each proposed an original five year term which can be renewed thereafter on a more frequent basis.

SCE&G proposed to offer standard ten year contracts and the Commission received additional comments from various parties on the appropriateness of much shorter periods. Witness Spann recommended a contract of only three years duration based on the argument that such power can be provided by construction of combustion turbine capacity in the event of default or early termination.[18] Witness Montague expressed CP&L's opposition to permitting contracts of less than five year duration and noted that the application of capacity credits would require longer terms enforceable over at least ten years.[19] The following statement was offered by Witness Denton in response to a related question:

> ...[F]ive years is a figure which is the same as we deal with all of our other industrial customers as rates are established, and as we are allowed to recover costs it takes us 28 or 29 years to recover costs. Five years happens to be a decision we made many years ago in dealing with customers on a long term contract basis. 20/

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[18] Tr., Vol. 1, Spann, p. 42.

[19] Tr., Vol. 1, Montague, p. 108.

[20] Tr., Vol. 2, Denton, pp. 44-5.

Witness Boylston also addressed the issue in a similar fashion.[21] The Commission weighs such evidence with a concern that lengthy contract terms may act to discourage that fraction of customers who are unable to offer sufficiently reliable generation to qualify for capacity credits, but may otherwise represent valuable sources of energy. Therefore, the Commission encourages each affected electrical utility to offer contracts of five year duration where only energy credits are allowed, but to negotiate longer terms as appropriate when customers can reasonably assume further responsibilities to provide firm capacity.

The Commission also recognizes that the substantial flexibility of negotiation which is reserved to each contracting party under part 292.301(b), supra, can ameliorate an otherwise inequitable aggregation of larger facilities. Where such arrangements are served by standard tariffs, more investigation by each affected electrical utility is needed to develop rates based on the diversified value of each type of generation. The Commission recognizes that inconclusive analytical evidence has been submitted on the possible differentiation of avoided costs between various types of qualifying facilities.[22] Therefore, no substantially restrictive characterization of such facilities should be made without adequate justification.

Perhaps the most significant issue raised in this regard relates to tariff applicability based on unit size. The

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[21]Tr. Vol 2, Boylston, p. 111.

[22]Exhibit RMS-4 attached to witness Spann's prefiled testimony tabulated results of his avoided capacity cost analysis for cases with and without small hydro generation in Duke Power Company's system. Revenue requirements appear to change disproportionately with the assumed increase in installed hydro generation but such effects vary from an otherwise linear relation by less than 20%. These results are potentially sensitive to various assumptions which are uncertain at this time. It should also be noted that each system may respond differently and therefore no general conclusions can be drawn on the basis of such evidence.

PURPA regulations require standard purchase tariffs to be established for qualifying facility of 100 kilowatts or less.[23] However, the Commission notes that both Duke and CP&L have submitted schedules which apply for considerably larger units. Witness Montague offered an argument for the 5 megawatt limitation proposed in schedule CSP-1:

> [I]ts appropriate that primarily everyone who is looking at or wants to consider the installation of cogeneration load and hydro have a rate which they can look at and make a determination of what credits that they would receive under this... [CSP-1] covers the majority of the interests that we have seen expressed.24/

Concern was expressed by the South Carolina Textile Manufacturers Association that such provisions may unfairly restrict the customer's right to negotiate rates or other contract terms when tariffs are applied in this manner.[25] Due to the lack of more definitive information on the nature of each facility and specific requirements for interconnection, the Commission intends to allow standard tariffs to be offered by each company in a form designed for general applicability but also reaffirms the right of negotiation and appeal where disputes arise in such instances. In no case should tariffs be represented as a qualifying facility's sole contractual option. When negotiation is invoked, the Commission may allow additional administrative costs to be recovered by each company when such costs are shown to exceed those expected under the otherwise applicable tariff.

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[23] 18 C.F.R., § 292.304(c).

[24] Tr., Vol. 1, Montague, p. 125.

[25] Tr., Vol. 1, cross-examination, Bowen, p. 126.

As a related matter, the Commission has received evidence on the desirability of setting full avoided costs as the basis of purchase agreements. Witness Spann emphasized that rates should neither discriminate against qualifying facilities by being set far below avoided cost or harm other ratepayers by being set substantially in excess.[26] In this context, Spann offered a comparative review of energy and capacity credits proposed in the companies standard tariffs:

> [I]n the case of energy credits the rates seem to be consistent with the economics of the rules and the way I would calculate them. In the case of capacity credits, Duke's and C.P.&L's numbers, while slightly different than the specifics I would calculate, seem to measure avoided costs, and the differences in interpretation are more in some minor issues, where there may be room for different interpretations.27/

The accuracy of such projections has been subject to considerable discussion during this hearing.

The Commission received divergent evidence on the question of a proper approach to calculating avoided costs, particularly in relation to the capacity component. CP&L, Duke, and SCE&G each presented witnesses who discussed a preferred methodology and also the nature of resulting costs. Witness Spann testified:

> ...We're going into an area of rate design that there is only limited experience with, namely avoided cost rates for purchases of power.... [T]here's going to be a little bit of experimentation and learning by doing it. It would not surprise me if both the companies [affected electrical utilities] and I three years from now caulculated avoided costs slightly different.28/

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[26] Tr., Vol. 1, Spann, pp. 23-25.

[27] Tr., Vol. 1, Spann, p. 59.

[28] Tr., Vol. 1, Spann, p. 59-60.

The Commission recognizes that there is limited experience in the area of calculating avoided costs and there will be learning by doing. Therefore, the Commission, believes it to be appropriate that the methodologies used be reviewed and some determination made as to the approach to be used in calculating avoided costs rates for the purchase of power.

As to an appropriate use of the PROMOD production costing model for calculating short-term running costs, CP&L, Duke and SCE&G were in substantial agreement. The Commission deems it appropriate to note that various adjustments were also applied, such as, crediting transmission losses and averaging across costing periods to translate such projections into the proposed rates.[29]

While the described methodology appears to be sufficiently accurate at this time to track expected short-run energy costs, the Commission perceives a need to regularly review and update each of the affected electrical utilities estimate in relation to historical data. Based on the recommendation of witness Spann, energy credits should be adjusted per the difference of suitably averaged hourly costs observed over the review period and rates offered in each tarriff.[30] The Commission also reserves its authority to review the appropriateness of each affected electrical utilities future adjustments to PROMOD data as more experience is gained with these projections.

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[29] See, Tr. Vol. 1, Montague, p. 95; Tr. Vol. 2, Denton, p. 35; Tr. Vol. 2, Gallant, pp. 68-9.

[30] See, Tr., Vol. 1, Spann, pp. 41-42.

Additional testimony was offered in relation to methodology used in calculating avoided capacity costs.[31] Two dissimilar conceptual approaches have been used in the derivation of tariffs for the purpose of this hearing. With the exception of SCE&G, filed capacity credits were based on the sum of annual carrying costs of an internal combustion turbine and various additional allowances. The Commission receives such evidence with the comment that these units may not be "avoided" where future expansion excludes peaking additions but depends instead on the proper sizing and startup of larger intermediate and baseload plants. Witness Spann outlined an alternate approach which incorporated detailed market estimates and computer modeling to represent the levelized difference between costs each company would incur with and without qualifying facilities.[32] Either approach depends on numerous assumptions needing empirical validation but the Commission also acknowledges that the range of avoided cost estimates indicates significant consistency. Each method is to be considered equally useful at this time for the purpose of establishing proper capacity credits.

The Commission intends to approve rates which represent a measure of full avoided cost unless further evidence is offered to indicate such policy is inequitable. All rates established must receive adequate justification, and for the purpose of review,

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[31] Tr., Vol. 1, Spann, pp. 13-20; Tr. Vol. 2, Edge, pp. 9-11; Tr. Vol. 2, Denton, pp. 38-40.

[32] Tr., Vol. 1, Spann, pp. 13-20.

rates approved in each affected electrical utility's standard tariff should serve as this measure. Where negotiated rates differ from those in a corresponding tariff, the Commission may exercise its authority pursuant to its regulatory powers over the affected electric utility to require a formal explanation of said differences including an analysis of the qualifying facility's operation within the given system, if appropriate.

The preceding discussion is only strictly applicable to "new capacity" as defined in part 292.304(b).[33] It is the Commission's intent that both energy and capacity credits be offered to those qualifying facilities which clearly allow a utility to avoid such costs over short and long-run periods respectively.[34] Witness Edge presented an argument for allowing only energy credits to those facilities which do not qualify as "new".[35] The record indicates that the majority of customers constructing self-generation prior to November 9, 1978, have operated in a manner which offsets their own needs rather than providing surplus capacity to the utilities. Capacity planners have therefore represented such customers as net demand and no additional capacity costs can now be avoided. In those

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[33] §292.304(b) of PURPA defines new capacity as "any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 1, 1978.

[34] The Commission requires these terms to be quantified as follows:

a. "Short-run" refers to that length of time during which a utility's capacity mix does not change significantly. During this period, qualifying generation therefore is expected to affect only the order of system dispatching.

b. "Long-run" refers to that length of time which incorporates a substantial portion of the utility's capacity planning horizon. This period should not be assumed less than the required lead time for a base load addition.

[35] Tr. Vol. 2, Edge, p. 11.

situations where no capacity displacement potential exists rates for other classes can be expected to increase if credits are not economically justified, in effect a market subsidization. The Commission also perceives that such facilities must already produce acceptable economic returns without further incentives or otherwise they would not have been built. Witness Spann offered the opposing argument for allowing full avoided costs in all situations. Based on such reasoning no price incentive will exist for the owner of "old" capacity to increase his output if such credits are disallowed.[36]

An equitable solution must therefore require both energy and capacity credits to be offered to that portion of "old" facilities which have been constructed since November 9, 1978. The Commission also intends to allow energy credits to be made available for "old" capacity in conjunction with approved rates and contracts. Based on short-run economics, such policy is proper as evidenced by the fact that output from "old" facilities is actually an avoided quantity of homogenous energy in the same sense that "new" facilities are recognized for their contributions toward meeting system load.

The need for consistent jurisdictional policy also requires further evaluation of the omission of capacity credits by South Carolina Electric and Gas Company. Several issues appear to be in contention in this regard. Company witness Gallant asserted that such cost could not be avoided during the next several years and, in fact, the avoided capacity cost would therefore be zero.[37] The Commission does not dispute the truth of such arguments but asserts that long-run costs must

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[36] Supplemental Vol., pp. 3-12.

[37] Tr., Vol. 2, Gallant, p. 82.

be considered over periods comparable to each company's planning horizon in order to accurately account for the effect of market growth. Such growth can affect the nature of plant additions in several ways. Where no resizing is possible, but some capacity displacement has occurred, a firm sale may be desirable. Plant construction may alternately be deferred if system reliability can be maintained at adequate levels.[38] Because capacity planners must assume that arrangements with qualifying facilities can be enforced over periods comparable to the lead time of the next generation addition, the Commission intends to promote capacity credits only in a context of adequate contractual safeguards.

When contracts are complimented by accurate avoided costs, neither party should find its interests unfairly represented. This issue was addressed by several witnesses during the course of cross-examination. Witness Spann offered a bounded estimate of avoided capacity costs for SCE&G which incorporated market projections prorated from the other affected electrical utilities data.[39] When questioned as to the accuracy of this approach, Witness Spann replied that such assumptions would not necessarily be reasonable for deriving precise forecasts. Proration could be correctly applied, however, on an industry by industry basis if other comparative factors were accurately known.[40] Witness Gallant stated SCE&G's view that these results indicate significant sensitivity to alternate market

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[38]Tr., Vol. 1, Spann, pp. 56-57.

[39]Tr., Vol. 1, Spann, p. 19, "...and 33$/KW to 42$/KW for South Carolina Electric and Gas Company."

[40]*Id.*, pp. 73-5.

forecasts and therefore are difficult to assess.[41] While acknowledging these uncertainties, the Commission has been offered further evidence which supports the general validity of these calculations.[42] When accurately quantified, an estimate of the long-run marginal cost of demand will alternately serve the purpose of estimating avoided costs and Exhibit RMS-2 tabulates such data filed by each affected electrical utility in order to fulfill requirements of Section 290.502(e).[43] The Commission receives this evidence with the comment that a reliable analysis has been performed under the Company's direction to arrive at an accurate long-run generation level estimate of SCE&G's marginal capacity cost. This estimate substantiates Witness Spann's lower bound value of $33/KW/year. On the basis of these arguments, the Commission finds such estimates to constitute a suitably accurate measure of avoided capacity cost for the SCE&G system until further contrary evidence of a quantitative nature can be offered.

Cost estimates are expected to be refined as dictated by changing conditions but particularly in relation to significant market growth. Each affected electrical utility must avail itself of market surveys and other techniques which would provide long-term indication of such trends.

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[41] Tr., Vol. 2, Gallant, p. 87.

[42] Tr., Vol. 1, Spann, p. 31-32.

[43] 44 Fed. Reg. 58705 (October 11, 1979).

III.

Based on a thorough review of the record herein and on the matters officially noticed, and on the foregoing discussion, the Commission finds and concludes as follows:

1. That affected electrical utilities should be encouraged to negotiate with qualifying facilities, especially larger facilities, to reach voluntary agreements for the purchase of electric energy produced by the qualifying facility where such agreements may be reached which encourage the investment in cogeneration and small power production facilities.

2. That the qualifying facility may invoke its rights and protections under PURPA and the rules and regulations promulgated pursuant thereto, if it so elects.

3. That in order to provide adequate safeguards, the Commission should retain its jurisdiction, pursuant to its authority to regulate utilities, to review the voluntary negotiated agreements upon complaint by the affected electrical utility, the qualifying facility, or upon its own motion, and to declare the same null, void and unenforceable should the Commission find the terms of the agreement to be unfair, unreasonable, not in the public interest or do not tend to encourage investment in cogeneration and small power production facilities.

4. That in order to perform its regulatory responsibilities, and to provide the recommended safeguards, the Commission finds the negotiated agreements should be reduced to writing and that the regulated affected utility should be required to file with the Commission a copy of the negotiated agreements with qualifying facility within 10 days of the execution thereof and within 30 days prior to any action by the affected electrical utility is taken pursuant thereto.

5. That in order to assure each party to the contract is aware of the Commission's safeguards, each negotiated agreement entered into by the affected electrical utility and a qualifying facility should contain the following provision:

> This agreement is subject to review by the South Carolina Public Service Commission upon complaint by either party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the South Carolina Public Service Commission.

The responsibility should rest with the affected electric utility to see that the above is inserted.

6. That each affected electric utility should be encouraged to develop rates which are tailored to various types of self-generation.

7. That should the affected electrical utility's rates differ from approved tariffs based on full avoided costs, the utility may be required to justify those special rates.

8. That qualifying facilities which do not qualify as "new capacity" should be entitled to receive avoided energy credits, but should not receive corresponding payments for installed capacity.

9. That SCE&G should be required to file rates which offer capacity credits to qualifying facilities of $33/KW/year allocated as monthly payments in a manner to be chosen at the option of the Company. Additional contractual provisions should also be filed concurrently which provide means for determining billed capacity, associated penalties for early contract termination and/or failure by the qualifying facility to provide adequatly reliable power.

10. That a review of the various methods used to compute avoided capacity costs should be completed by December 31, 1981, and a standard approach should be established by formal order if deemed appropriate, to permit updating the June 1982 filing of

avoided costs. At a minimum, the following items should be considered in establishing a standard methodology:

a. Assumptions regarding the treatment of losses and quantifiable effects in the transmission and distribution system.

b. Levelized costs through the planning horizon.

c. Allocation of capacity credits on the basis of standard length contracts.

11. That the rate schedules and contract provisions filed by Carolina Power and Light Company are just and reasonable and therefore should be approved.

12. That the rate schedules and contract provisions filed by Duke Power Company are just and reasonable and therefore should be approved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. That the qualifying facility may invoke its rights and protections under PURPA and the rules and regulations promulgated pursuant thereto.

2. That the Commission hereby retain jurisdiction to review the voluntary negotiated agreements upon complaint by the affected electrical utility, the qualifying facility, or upon its own motion, and to declare the same null, void and unenforceable.

3. That the negotiated agreements be reduced to writing and that the regulated affected utility file with the Commission a copy of the negotiated agreements with qualifying facility within 10 days of the execution thereof and within 30 days prior to any action by the affected electrical utility is taken pursuant thereto.

4. That the affected electrical utility insert in each negotiated agreement entered into by a qualifying facility the following provision:

This agreement is subject to review by the South Carolina Public Service Commission upon complaint by either party, or pursuant to its own motion, and the terms herein may be modified in whole or in part or declared null and void by the South Carolina Public Service Commission.

5. The affected electric utility may be required to justify rates in negotiated agreements which differ from the full avoided costs.

6. That qualifying facilities which do not qualify as "new capacity" are entitled to receive avoided energy credits, but are entitled not to receive corresponding payments for installed capacity.

7. That SCE&G file rates by April 20, 1981, which offer capacity credits to qualifying facilities of $33/KW/year with the necessary contractual provisions as set forth herein in compliance with the findings of the Commission.

8. That the rate schedules and contract provisions filed by Carolina Power and Light Company are just and reasonable and therefore are hereby approved.

9. That the rate schedules and contract provisions filed by Duke Power Company are just and reasonable and hereby are approved.

10. That a review of the various methods used to compute avoided capacity costs be completed by December 31, 1981, and, if deemed appropriate, a standard approach be established by formal order.

11. That this Order remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Rudolph Mitchell
Chairman

ATTEST:

James H. Still
Executive Director
(SEAL)